

**COURTROOM
CHALLENGES in
Sex Trafficking Cases**

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**COURTROOM CHALLENGES IN SEX
TRAFFICKING CASES**

OUTLINE

Challenges

Overcoming the Challenges

- Use of Expert Witness
- Jury Selection
- Witness Preparation

CHALLENGES

- JURY: Lack of knowledge and biases
 - Terminology
 - Expectation of evidence
 - Victim behaviors

CHALLENGES

- JURY: Lack of knowledge and biases
 - Terminology
 - Bottom Bitch, Track, Gorilla Pimp, Trick, Incall, Outcall, Stable, Daddy, Out of Pocket, etc.

CHALLENGES

- JURY: Lack of knowledge and biases
 - Expectation of evidence
 - Eyewitness testimony, DNA, motel video, all prior police contacts documented, etc.

CHALLENGES

- JURY: Lack of knowledge and biases
 - Victim behaviors
 - Delayed disclosure, didn't leave when could, no tears...
 - COUNTERINTUITIVE BEHAVIOR

CHALLENGES

- JURY: Lack of knowledge and biases

Jury Question to 17 year old, drug addicted victim:

"Do you take any responsibility for what you have done"?

SOLUTIONS

JURY: Lack of knowledge and biases

- SOLUTION = EXPERT TESTIMONY
 - Terminology
 - Pimp/Prostitution Culture and Techniques
 - Victim Dynamics

SOLUTIONS

EXPERT TESTIMONY

State v. Lindsay

"We cannot assume that the average juror is familiar with the behavioral characteristics of victims of child molesting . . . (e.g. recantation, conflicting versions of events, confusion or inarticulate descriptions) which jurors might attribute to inaccuracy or prevarication . . .

SOLUTIONS**EXPERT TESTIMONY****State v. Lindsay**

Jurors, most of whom are unfamiliar with the behavioral sciences, may well benefit from expert testimony of the general type offered in the present case”

-*Lindsey*, 149 Ariz. 472, 473-74, 720 P.2d 73, 74-75 (App. 1986).

SOLUTIONS**EXPERT TESTIMONY**

DO NOT have your expert testify that Victim's behavior was consistent with abuse...

- “[E]xpert testimony that victim's behavior was consistent with abuse having occurred was inadmissible.”

-*State v. Moran*, 151 Ariz. 378, 728 P.2d 248 (1986).

Do NOT testify that the defendant's behavior was consistent with abuse.

- “[An e]xpert witness testifying about general characteristics and behavior of sex offenders and victims may not explain that, based upon characteristics and behavior he has described, a person's conduct is consistent or inconsistent with crime having occurred.”

-*State v. Tucker*, 165 Ariz. 340, 346, 798 P.2d 1349, 1355 (App. 1990)

Blasi – Unpublished Opinion

- Issue: Whether evidence of behavioral characteristics of sex offenders may constitute inadmissible “profile evidence” .

Blasi - continued

- “The testimony we find objectionable in this instance might have been appropriately admitted if offered to explain victim behavior such as acquiescence, failure to report, or delayed reporting.”

To Avoid Pitfalls

- Use a “blind” or “cold” expert.
- Avoid words like “frequently” and “most of the time” .
- Do NOT quantify or give percentages.

To Avoid Pitfalls - cont.

- Testimony should be in generalities.
- Remember: The testimony is not to diagnose, it is to explain.
- Admit limitations of testimony.

Admit limitations of testimony:

Q: Now, these factors that you were telling us about, I think you said they are not present in all cases, right?

A: That's correct.

Q: And are there some cases, child sex trafficking cases, in which some of the factors are present and some not?

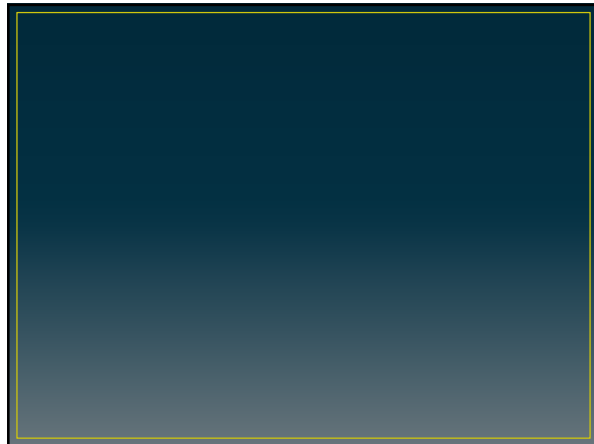
A: That's correct.

Admit limitations of testimony:

Q: Does the presence or absence of any of these factors tell us whether or not child sex trafficking occurred in a particular case?

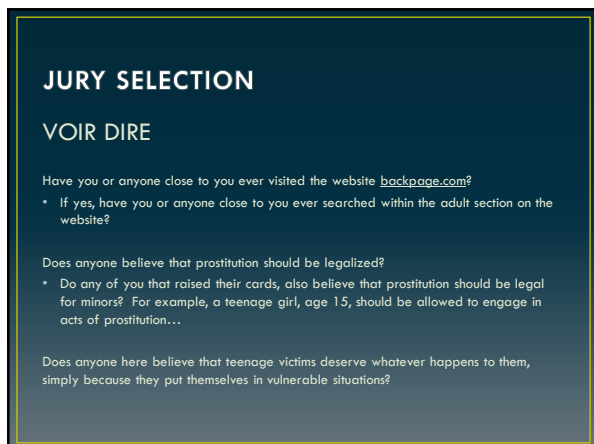
A: No.

-*State v. Curry*, 187 Ariz. 623, 629, 931 P.2d 1133 (App. 1996).





JURY SELECTION



JURY SELECTION

VOIR DIRE

Have you or anyone close to you ever visited the website backpage.com?

- If yes, have you or anyone close to you ever searched within the adult section on the website?

Does anyone believe that prostitution should be legalized?

- Do any of you that raised their cards, also believe that prostitution should be legal for minors? For example, a teenage girl, age 15, should be allowed to engage in acts of prostitution...

Does anyone here believe that teenage victims deserve whatever happens to them, simply because they put themselves in vulnerable situations?

JURY SELECTION

VOIR DIRE

Other Suggested Topics

- Drug Use
- Domestic Violence
- Co-Defendants

CHALLENGES

- Victim/Witness contact or cooperation
 - Runaways
 - Transients
 - Fear, etc

CHALLENGES

• Victim/Witness contact and cooperation

- W: I talked to the black bitch, she said she aint going, she changed her number
- D: I don't know what's up with the young bitch, I have bro, both bros trying to get a hold of her
- D: You gotta tell that bitch not to go to court
- She don't have to go
- Once the case gets dismissed, just a misdemeanor warrant, if they arrest her and brought to court, she just have to deny when asked to ID in court, she just has to say I don't seen him here, that aint him



CHALLENGES

• Victim testimony

- Inconsistencies...
- Breakdowns...
- etc

CHALLENGES/SOLUTIONS

• Victim/Witness contact and cooperation

- D: what's wrong
- W: I'm just tired
- D: I wanted to tell you: you know when we on the blade, in San Bernardino, I realized that a lot of time, almost all the time, just listen, all the times when we were out there with "Black", every time she would make a lot of money and I would praise her a lot, I feel like I didn't realize while it was happening, I want to apologize to you for that, because you would feel you weren't needed or wanted. I love you no matter what. You'll always be up there on the pedestal. I got distracted by the money. I love you. I praise you.



SOLUTIONS

Victim/Witness contact

- Be Consistent
- Be Authentic
- Be Diligent
- Victim/Witness cooperation
 - "Pick Your Battles"
 - Let it slide and call them out

SOLUTIONS

AVOID:

- Judgment
- Lectures or parenting
- Challenging their perception
- Trying to be "cool"
- Asking why, making promises, bribes, expressions of disapproval or disbelief, asking to demonstrate

CHALLENGES

EVIDENCE or LACK THEREOF

CHALLENGES

- TYPICAL CORROBORATION?
 - Neutral Witnesses
 - DNA/Medical
 - Confessions

NOT IN THESE CASES



SOLUTIONS

CORROBORATE VICTIM not acts

- Motel records, cell phones, ads
- Video surveillance, FIs
- Other victims
- Flip the Bottom, John

DON'T FORGET

- Preservation letters
- Affidavits for custodian of records

SOLUTIONS

Argument...



SOLUTIONS

- Victim testimony issues
 - EVIDENCE
 - How to make \$



OTHER TIPS...

Evidence to get:

- birth certificates
- text messages
- hotel records
- social media...

OTHER TIPS...

- 404 B and C Motions
- 609 Motions (Defendant and Victims)
- Victim history of prostitution (?)
 - Rape Shield MIL
- Forfeiture by Wrongdoing
 - Jail calls, social media...
- Freetalks/Testimonial Agreements

QUESTIONS...

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